

1889

# Sunday Legislation

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A Review of the History, Origin and  
Construction of Sunday Legislation

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1889.



In tracing the origin of Sunday legislation it is impossible to separate the growth and influence of the Church from its history. For the observance of Sunday as apart from other days we must look to the early holidays, and from them to the legislation that follows.

It may fairly be said that Christianity stood midway between the Judaic theocracy and the pagan state religion of the Romans before and particularly during the reign of Constantine.

The enormous extent of the Roman empire, the well regulated connexion

of its provinces, and the great facilities for mutual intercourse opened an immense field to the Christian doctrine and the best way for its diffusion. From the unsettled state of conscience among the heathens, and their faith in miracles which always prevails in a heathen world, the Church was in a position to make good use of this weakness for the conviction of those who could not be converted by other means; and a more favorable theatre for the performance of miracles was hardly possible than the Roman world at that time, which was ruled by daemons, visions, and prophecies.

In consequence the number of proselytes increased and the Church was firmly established before it

attracted the observation of the Government.

As Christianity gained social power in the course of time it was recognized by the Roman state in accordance with their idea of religion, which was that it was a contract between the gods and the state. Religion was a part of the government — the civil law decided for them, when to worship and how; what to offer and how much; when to pray and of what the prayer should consist; in short it was a civil religion. "A man became pontiff as he became pretor or consul; when he was candidate for religious office, he underwent an examination, he passed no period of probation in a seminary, he was not asked if he had an ecclesiastical vocation. He proved that he had

served his country well, and had fought bravely in this or that battle. There was no sacerdotal spirit; these civil pontiffs continued to be what they had been,— cold, practical men, without the slightest idea that their functions at all cut them off from the rest of the world. In every respect the religion of Rome was the opposite of theocracy. The civil law regulates actions; it does not occupy itself with ideas; and so one result of Roman religion was that Rome never had the faintest idea of dogma. The exact observance of rites compels the Dicty if the petition be presented in proper form to make no inquiry into piety or feelings of the heart. More than this, devoutness is a defect; it implies a dangerous exaltation in the popular

mind. Value, order, regularity—this is what is wanted. Anything beyond this is excess (*Superstitio*). Men must not fail to do what is due the gods; but they must not give them more than their due, and giving more was abhorred as much as impiety.

Rome recognized Christianity as she recognized all other gods—it was deemed a matter of courtesy to the religion of other nations and the Empire gave it protection. When Rome conquered a nation, the gods of that nation were prayed to that they might bestow their favors upon Rome. The Pantheon was the home of all gods. While it is true that Rome recognized all gods and religions, they were nevertheless to be protected and regulated by the state,



So when Christianity was recognized by Rome during the fourth century, it was such a recognition as had been granted to the religion of other tribes.

There is legislation concerning the Sabbath as early as the year 214, protecting the Jews in the observance of their feast days and Sabbath. It is as follows: On their feast days or Sabbaths, the Jews do not undergo any bodily service nor perform anything whatever; neither are they to be summoned into court on account of any public or private suit; neither may they summon Christians into court. Again in 409 other laws appear recognizing the rights of the Jews, and also indicating that Christians still observed the Sabbath and were not to be disturbed by any

legal business. It was in the spirit of Rome to grant certain rights to all legal religions.

Christianity was therefore treated as many other religions had been, and was protected in the same manner, Rome still reserving the right as it had always done, to legislate concerning it. When Constantine leaned over to it, Paganism was hardly able to maintain itself in the contest, though Pagan ideas greatly prevailed.

Constantine the Great recognized Christianity early in his reign, and from his time the legislation directly and indirectly may be traced. Constantine, as pontifex maximus, was supreme authority in all religious matters and was also worshipped as a god. The Pagan religion had many holidays and all labor and business

were suspended. Before the time of the quinquagesima the number of days set aside for reverence to the gods to whom they were consecrated were many; no trials could take place at Rome on such days, and it had become a resource upon which a wealthy criminal could speculate as a means of evading justice. There were many such holidays while the empire was still heathen.

The relation of Constantine to Christianity is a disputed subject, but it would seem that his acceptance of it was both a matter of personal conviction and also a matter of statesmanship. The story of the flaming cross at noon day does not seem to have had more effect than creating a superstitious idea of the cross in his mind,

for he connected the worship of Christ with the worship of Apollo (never forbidding heathen worship) and ordaining the celebration of Sunday under the name "Dies Solis" Let all judges and all city people and all tradesmen rest upon the venerable day of the sun. But let those dwelling in the country freely and with full liberty attend to the cultivation of the fields; since it frequently happens that no other day is so fit for sowing grain or the planting of vines; hence the favorable time should not be allowed to pass lest the provisions of heaven be lost. Codex Justin.

This was the first of a long series of imperial constitutions most of which are incorporated in the Code of Justinian. They provide that emancipation and manumission

to be the only legal proceedings permissible on the Lord's day, though contracts and compromises might be made between parties where no intervention of the court was necessary. Pleasure was forbidden as well as business. No spectacle was to be exhibited in a theatre or circus.

In the same year that this Sunday decree was issued, Constantine ordered that if lightning struck the imperial palace or any other public building the haruspices, according to ancient custom, should be consulted as to what it might signify and a careful report of their answer should be drawn up for his use.

The worship of the sun was prominent. Gibbon says: the devotion of Constantine was peculiarly di-

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ected to the genius of the Sun, the Apollo of Greek and Roman mythology and he was pleased to be represented with the symbols of the God of Light and Poetry. The altars of Apollo were crowned with votive offerings of Constantine and the credulous multitude was taught to believe that the emperor was permitted to behold with mortal eyes the visible majesty of their tutelary deity, and either sleeping or waking he was blessed with the auspicious omens of a long and victorious reign. The Sun was universally celebrated as the invincible guide of Constantine.

Monday legislation grew from purely pagan sources, for Christianity did not have influence enough to produce such legislation, and, as Pontifex maximus of all religions

that were recognized, Constantine sought to honor his patron deity, the sun god, Apollo. Whatever may be said as regards Constantine's position towards Christianity, its nevertheless exerted great influence on Rome. It is not easy to trace to the direct form of Christianity the origin of all that made Rome so enlightened in her views and her laws, yet, the sacredness of marriage, the manumission of slaves, would seem to lead to the conclusion that the influence was at least indirect.

The earliest recognition of Sunday as a civil institution, in 321 by Constantine, was followed in 326 by a law requiring rest, in 386 by one forbidding the transacting of any business or the arbitration of causes, in 469 by one suppressing

certain games on Sunday, and in this year was enacted the famous law of Leo and Anthemius providing as follows: The Lord's day we decree to be so honored and revered that it should be exempt from all compulsory process; let no summons urge any man; let no one be required to give security for the payment of a fund held by him in trust; let the pleader cease his labor; let the sergeants of the court be silent; let that day be a stranger to his trials; let the criers voice still; let the litigants have breathing time and a interval of truce; let the rival disputants have an opportunity of meeting without fear of comparing the arrangements made in their names, and arranging the terms of the compromise. If an officer of the



Court, under pretense of public or private business dare to dispute these enactments, let his patrimony be forfeited.

In 534 the third Council of Orleans prohibited the labor allowed by Constantine and in 545 the second Council of Maastricht declared: Keep the Lord's day wherein ye were born anew and freed from all sin. Let no one spend his leisure in litigation; let no one continue the pleading of any cause. Let no one under plea of necessity allow himself to place a yoke on the neck of his cattle. Let all be occupied in mind and body in hymns, and in the praise of God.

If any one dwells near a church, let him go thither, and upon the Lord's day engage with prayers and tears. Let your eyes and hands on that day

be lifted up to God. For this is the day of perpetual rest. This is shadowed to us in the seventh day in the law and the prophets. It is right therefore that we should all celebrate this day, through which we are made to be what we were not; for we were in sin, but through this we were made righteous. Let us then yield a willing service to the Lord, through whom we know ourselves to have been freed from the bonds of error. Not because our Lord requires it of us that we should celebrate this day by constraint of the body, but he seeks obedience, by which, trampling on earthly things we may be lifted to heaven through his mercy. If any one shall disregard this wholesome exhortation, or treat it contemptuously, he shall, in the first place draw upon himself the

wrath of God; and secondly, the unappeasable anger of the clergy. If he be an advocate, let him wholly lose the privilege of pleading the cause; if a countryman or slave, let him be soundly beaten with whips; if a clerk or a monk, let him be suspended from the society of his brethren for the space of six months. For all these things may now be rendered pleasing unto God.

The Saxons adopted these canons and imposed additional restrictions upon secular pursuits, forbidding by various laws passed in 673, 697, 749 and 906 all work on Sundays; in 767, all traveling; in 925 all trading. In 958 a law of Edgar the Peaceable declared the Lord's day to extend from three o'clock in the afternoon of Saturday until the dawn of

Monday morning. A few of the Saxon laws concerning Sunday will tend to show the manner in which the observance of that day was affected by such legislation.

Law 3 of Ine, King of Wessex, who reigned from 645 AD until 725 is as follows: If a theowman (slave) work on Sunday by his lord's command, let him be free; and let the lord pay, thirty shillings as fine. But if the theow work without his knowledge, let him suffer in his hide, or in hide-geld (money paid in lieu of corporal punishment). But if a free man work on that day without his lord's command, let him forfeit his freedom or sixty shillings; and be a priest doubly liable.

There seems to have been a scale

of compensation prescribed for the commission of almost all crimes. Even the life of the King was rated at a money value, and under the laws of Athelstan it was 30,000 thrypnae each being worth four pence; an earl was rated at 15,000 and so on to a common person.

"If any slave do any service labor contrary to his lord's command, from sunset on Sunday or till sunset on Monday or, let him make a compensation of eight shillings to his lord."

"If any so do of his own accord on that day, let him make a 'bot,' or fine to his lord or his hide,

"But if a freeman so do at the forbidden time, let him be liable to his heals-fung (a fine paid to save himself from the pillory) and the

man who detects him, let him have half the fine and the work. These were the laws during the reign of Withred, King of Kentishmen from 690 to 725 A.D. and were passed about 696 A.D.

The seventh law of the code of Alfred, King of Wessex from 871 to 891, reads as follows: If any one engages in Sunday marketing, let him forfeit the chattel and travel over 142 pence among the Danes, and thirty shillings among the English.

If a freeman work on a festival day, let him forfeit his freedom or pay a fine; Let a theowman sup in his hide or hide-gild.

If a lord obliges his theow to work on a festival day, let him pay lab-slit within Danish law and wite among the English.

King Edgar reigned from 959 to 975 A.D. Among the ecclesiastical laws of his reign, number 5 is as follows: And let the festivals of every Sunday be kept from noon-tide of Saturday till the dawn of Monday on pain of the wite which the doom-book specifies; and every other mass day, as it may be commanded; and let every ordained fast be kept with every earnestness; and every Friday's fast unless it be a festival; and let scot (tax), be paid for every Christian man to the minister to which it is due; and let every church-right (privilege) stand as it has stood.

It has previously been said that the Saxons accepted canons of the church and imposed additional restrictions upon secular persons. Earlier than the sixth century there

are no means of knowing what led the Saxons to accept Christianity in place of their old Gods as readily as they did, but it is known that it met with little resistance. Perhaps because the new religion made no moral demands which seemed to them more onerous than those to which they were accustomed. Those who believed in runes, mysteries and incantations were satisfied that the mass should displace them. Their holy places were not levelled nor did they lose any of their sanctity, but they were simply dedicated in other names. Their pagan sacrifices were not totally abolished, but rather were converted into festivals where the new Christians might eat and drink and continue to praise God.



Apron and Östre, Woden, Tiw and  
 Frigg, Donar and Fæthne retained  
 their places in the calendar of months  
 and days, while the highest offices  
 of the Christian Church were offered  
 to compensate the noble class for  
 the loss of their old sacerdotal func-  
 tions. "How should Christianity fail,"  
 asks Kemble "to obtain access where  
 Paganism stepped half way to meet  
 it, and it could hold out so many  
 outward points of union to paganism?"

Whatever may have been the  
 original influence that brought about  
 Sunday legislation, it must remain  
 quite clear that the Church aided  
 directly and indirectly in the earlier  
 history of Sunday laws. It is not to  
 be here discussed whether or not a  
 religious sentiment of the Christian  
 Church was at the foundation of

these Sunday laws, or whether Sunday was simply a day to be observed among the many festivals which the Church afterward took to itself as the Lord's day.

The aid of the Saxons to drive out the Scots and Picts who were constantly annoying the Britons brought them to the island, where they had been many times before on piratical expeditions. About 449 A.D. Vortigern the British chief called upon them for assistance to help drive out those barbarous tribes inhabiting the north of the island. They came and were again left, but turned their arms against the inhabitants. The native Britons were completely subjugated by the new people who overspread the whole country, introduced their

laws, customs and language. Eight kingdoms were formed into the Saxon heptarchy and in 927 they were united into one Kingdom called Anglia or England. This short review will tend to show that the Domesday laws of England were but the expansion of the Saxon laws, and show the development from the original source.

Many of the enactments of the Anglo-Saxon Kings were confirmed by William the Conqueror and Henry II and thus became part of the common law of England IVm. Blackstone 446, 526.

The first statute of general importance was that of 5 and 6 Edw. I C. 3 passed in 1552 in which after reciting that there was nothing in the scriptures prescribing any day when

which Christians should refrain from  
 labor, it was enacted that Sunday  
 and certain other days should be  
 strictly observed as holy days; provi-  
 ded, that when necessity might  
 require it should be lawful to labor,  
 ride, fish or work at any kind of  
 work. In 1614 James I issued his  
 famous "book of sports," in which  
 are set out the sports which may  
 be lawfully pursued on Sunday.  
 This book was written in consequence  
 of the complaints of the arbitrary  
 interference of Puritan magistrates,  
 and ministers; and in it the king  
 declared "Our pleasure is that after  
 the end of divine service our good  
 people be not disturbed, letted or  
 discouraged from any lawful  
 recreation."

This was confirmed by Lhas. I who reissued the book verbatim. It seems to have fallen out of the public mind, although the command of James was that it be read in the churches.

Thereby was passed the Statute of 29 Lhas II C VII upon which the legislation of this country is mainly based. It was the law of the American Colonies up to the time of the Revolution, and so became the basis of the American Sunday laws. It enacted "that no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of the ordinary callings, upon the Lord's day or any part thereof (works of necessity and charity only excepted);"

and" that no person or persons shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsover, upon the Lord's day or any part thereof". This act was followed by a series of decisions which, proceeding upon the ground that all prohibitory and penal statutes must be construed rigorously, confined the statute within narrower limits than was intended.

The language of this law and the history of its time, indicate an idea that government might superintend the religious ideas and duties of individuals; that persons might be ordered by law to attend worship and exercise piety at home. The title of the law was "An act for the better observance of the Lord's day"; and

it commanded in so many words the people "repairing to church" and "exercising themselves in duties of piety and true religion, publicly and privately."

It is probably true that when the colonies came to re-enact this law or to pass others like it, they did so in the view that the government might compel people to be Christians, or at least to appear as such. But it does not sympathize with the doctrine of popular government as developed in later years in this country; and, as far as Sunday laws are concerned, it is abandoned unequivocally and completely.

At common law in England a contract made on Sunday is not void, nor is Sunday trading or labor unlawful. At an early period however the

legislature began imposing restrictions, at first by making Sunday trade impossible by closing the places of ordinary business, later by declaring certain kinds of labor and trade unlawful, still later by attempting to prohibit all trade and labor.

Parliament has occasionally sat on Sunday in cases of great emergency, as on the demise of the crown. In one or two cases in recent years divisions in the House of Commons have taken place on Sunday morning. The Ballot Act of 1872 enacts that in reckoning time for election proceedings, Sundays are to be excluded. A similar provision is contained in the Municipal Corporations Act, 1842, as to proceedings under that Act.



During the Puritan Supremacy the laws relating to Sunday (1640-60) were both theological treatises and civil enactments and the Sunday observance which prevailed in New England in the earlier times spring from them; they are known as the Blue Laws and contain the full spirit of religion.

Their customs in relation to Sunday were rigid in the extreme and their laws equally so; they established the idea that Sunday was the Christian Sabbath and that it was to be kept holy, not merely by the absence of all labor but by that of all amusement.

"Upon the Sabbath, they'll no physick take  
Lest it should work, and so the Sabbath break

These laws remained in full force

as long as they were sustained by the feelings and habits of the people. But the excessive severity of the earliest years of the Colonies could not be maintained either in usage or law. There seems to have been a gradual relaxation which by the time of the revolutionary war had become very considerable. When the colonies became States, the Sunday laws assumed a form which they have maintained substantially ever since; although it is certain that the observance of these laws has become much less constant and universal than it was formerly, and violations are now habitual and disregarded which formerly would have been visited with immediate punishment as the earlier records show.

The Acts and Laws of Massachusetts Bay, Newfame and Connecticut colonies will show the manner in which Sunday was affected by law; the same spirit pervades the laws of the colonies.

The colonists at Newfame took the Bible as their guide in all things. The common law, based upon the Sabbath laws of the Jewish theocracy, was the accepted authority concerning Sunday. The law of 1656 required attendance upon legal worship on Sunday, "fast," and "thanksgiving" days, and those who profaned the Sabbath "proudly, presumptuously and with a high hand," were put to death. Newfame united with Connecticut under the latter name.

The law of Connecticut Colony of 1650 punished burglary on Sunday

first offense, by loss of one ear; second offense, by both ears; third offense, death. The law of 1653 forbade vessels leaving harbor on Sunday; punished non-attendance on legal worship on Sunday, fast and thanksgiving days; Law of 1689 forbids all Sabbath profanation and compels attendance on public worship; Law of 1696 forbade all diversion, public drinking, profane desecration, rude or irreverent behavior; penalty at the discretion of the judges; Law of 1694 enforced catechizing, family prayer, and general observance of Sunday by selectmen, constables, and grand jury men; Law of 1721 punished non-attendance on lawful worship "going forth from one's place of abode except for worship or necessity", disturbing public worship on Sunday by fine or imprisonment, without appeal; Law of 1726, empowered local officers

to punish profanity, drunkenness, and Sabbath-breaking, without trial"; Law of 1733 includes former enactments, prohibits gathering in the streets "loitering or drinking," and adds whipping for non-payment of fine; Law of 1740 removes penalty for illegal worship from "sober and conscientious dissenters".

The laws of Massachusetts Bay Colony were practically the same as those of Connecticut and New Haven. In 1760 the existing laws were repealed and the reasons for repealing are thus stated: Whereas by reason of different constructions of the several laws now in force relating to the observation of the Lord's day, or Christian Sabbath, the said laws have not been duly executed, and, notwithstanding the pious intentions of legislators, the Lord's day hath been greatly profaned.

therefore etc. This new code prohibited working, playing, travelling, entertaining any but "travelers, strangers and lodgers," in public-houses, loitering, walking, or gathering in streets, wharves, fields, absence from public worship for one month, and all unlicensed funerals, except in Boston after sunset; town wardens with excessive powers were appointed in each town to execute these laws; a Sunday patrol was established in Boston; the penalty was fine, or imprisonment in common jail five to ten days in default of fine. These laws were to be read at the town meeting in March each year.

The Colony Records show punishment for whipping servants, playing cards, smoking tobacco etc. and though the spirit was nigger in those days.

yet the "Blue Laws," that exist in tradition are oftentimes grossly exaggerated.

Thus far in an imperfect way has been traced the origin of Sunday laws from the time of Constantine to the adoption of the constitution of the United States. It has been seen that all Sunday legislation is the product of Rome; that the Saxon laws came from the Romans; that the English laws are an expansion of the Saxon; and the American a transcript of the English.

By the Constitution of the United States, Sundays are to be excluded from the day allowed the president to return a Bill. A similar provision is often contained in State constitutions as to the return of a Bill by the governor. The United States legislation on the subject of Sunday

is not important. It declares that naval and military studies are not to be pursued, and that the day is not to be reckoned in bankruptcy proceedings.

The Federal Constitution guarantees utmost freedom and conscience in respect to religion: Article ~~II~~ and first amendment. But even the most perfect realization of religious freedom, the sacred regard for the utmost liberty of conscience does not avoid the possible collision between legal and religious duties of certain classes of citizens. And this is so, because the several religions do not agree as to what day constitutes the Lord's day, so until that is decided on that point at least such conflict must last.



It would seem as if the contradiction was beyond the law. The oldest of the monotheistic forms of religion, that of the Jews, fixes the seventh, that of the Christians the first, that of the Mahomedans the sixth day. The observance of Sunday as a religious duty can be imposed, if at all, by the Church alone, whose authority is coextensive with the conscience and belief of the individual, so that all laws (Sunday) in so far as they spring from religious motives are unconstitutional.

No man living under the protection of our institutions can be coerced to profess any kind of religious belief or to practice any peculiar form of worship in preference to another. In this respect the Christian, the Jew, the Mahomedan and the Pagan

are alike entitled to protection; the border line is passed only when they wantonly and maliciously outrage and ridicule the moral and religious conviction of others. The right of conscience as understood under our law "is simply a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever; or to support any religion; and to do or forbear to do any act for conscience sake, the doing or forbearing of which is not prejudicial to the public moral."

All agree that to the well being of society, periods of rest are absolutely necessary. To be productive of the required advantage, the periods must recur at stated intervals, so that the mass of which the community is composed may enjoy a

respite from labor at the same time. They may establish it by common consent or the legislative power may rightfully fix the time of their stated return and enforce obedience to the direction.

Of course, some one day must then be selected, and this is the handle at which opponents of Sunday legislation do such hard pulling. It has been said that the round up the work presents none which being preferred, might not be regarded as favoring some of the numerous sects into which mankind are divided, so that the selection of any day would be a discrimination in favor of those whose religion fixes the same day as their holy day, against all others, and therefore a violation of the consti-

tutional inhibition against discrimination in favor of any creed.

In a Christian community where a very large majority of the people celebrate the first day of the week as their chosen period of rest, it is not surprising that that day ~~day~~ should have received legislative sanction. There can be but little doubt that this was in the minds of the early legislators. But the day fixed by law is nevertheless not the holy day of any Creed, but the day best suited to accomplish the object of the law—rest. Sunday is named for the rest-day because the masses of the people have for centuries observed it, more or less fully, and the government can more easily secure and protect a day already popularly designated

than establish a new one — not because law undertakes to enforce a divine command. Protection of individual liberty is the real object; the protection of liberty of the many for rest and worship against the encroachments or interruptions from the few. It is because the masses desire and need the day for rest that the law forbids the few to prosecute and exact continued labor. It is because the masses desire religious institutions that the law interposes to restrict on one day the bustle and excitement of the other six. Its purpose is to guarantee impartially that the masses shall enjoy a stated day during which there shall <sup>not</sup> be needless demands of ordinary business, or attractions and temptations

of exciting amusements or interruption of service and tumult, preventing or hindering those from worshipping who wish to worship, those from meditating or studying who wish to do so, those from resting who need repose. The State says, six days shall be free for the pursuit of labor, business and pleasure, one day shall be protected for the enjoyment of quiet, repose and rest.

It may be interesting to know how far the religious character of Sunday enters into our law. There are hundreds of decisions based upon a recognition of the religious character of Sunday and this comes clashing at once with the doctrine that the State possesses no authority whatever over the conscience or

religion of its citizens. But it must be remembered that it is an imperative duty of the State to secure to the individual his religious freedom and protect him in its exercise. The State does not compel anyone to observe Sunday as a holy day or a religious institution, but enables those who wish it, to do so without hindrance or molestation. The State professes no religion and sides with none; but it protects every one in his religious convictions.

Taking blasphemy for an example, the State punishes blasphemy, not because it is in sympathy with God, but because it is a wanton insult to the pious believer; so it punishes the desecration of the Lord's day, not because it is an offense against Christianity but as an

insult to the Christian whose Creed is thereby reviled. But it does not follow, because blasphemy is a crime that therefore one is not at liberty to dispute or argue against the Christian religion, or any accepted dogma. Its "divine origin and truth are not so far admitted in the law as to preclude their being controverted." Legal blasphemy implies that the words were uttered in a wanton manner, "with a wicked intent and malicious disposition and not in a serious discussion upon any controverted point in religion," People vs Ruggles 8 Johns. 293.

It is asked why not interdict labor on those days that are holy to other religions and not to Christians and thus protect them to the same extent?



This may or may not be a perplexing question. It can with reason be answered that some day had to be selected and it was therefore such a day as would be to the convenience of the greatest number, and also, to interdict labor on every day that may happen to be the holy day of any creed would be to withhold it from all. Sunday would be like any day and every day would be like Sunday.

There seems to be a large margin in the opinions of the able judges who have delivered their learned opinions in the cases bearing upon the question whether or not the Christian religion enters into our Sunday laws, and the construction of same. It is hard to gather a conclusion as there are two ideas that appear prominent in this question which

return in many different forms and expressions in the different cases, yet the same ideas are always to be recognized.

The one, that in considering the constitutionality of our Sunday laws, the feelings of the people who framed the constitution must be remembered; that they had religious ideas of their own, bound by previous social ties with common reminiscences of the past; that the people for whom it was ordained must be remembered; that the constitution on its face shows that the Christian religion was the religion of the framers; that they did not regard Sunday as a day of compulsory rest the other, that the idea of religion does not and dare not enter into our laws.

Probably a majority of the judges throughout the country believe more or less fully, that God did set apart the seventh day as a day of rest and worship; that he has authorized some transfer of its sanctions in their substance to the first day; and that he sanctions a permanent consecration of the first day to the religious uses of mankind. But they must hold such tenets as matter of individual faith only and dare not administer them as part of the law of the land.

It is sometimes urged that Christianity is the common law of the land. Chancellor Kent in *People vs. Ruggles* 4 Johns 296 says Christianity in its vulgar sense as a religion revealed and taught in the Bible is not unknown to our law. Judge Cowley qualifies this by saying that

in a certain sense and for certain purposes it is true. Many of the best features of the common law and especially those with regard to family and social relations which compel the parent to support the child; the husband to support the wife; which make the marriage-tie permanent, and forbid polygamy — if not derived from, have at least been improved by the prevailing religion and teachings of its Sacred Book. But Christianity is not a part of the law of the land in any sense which entitles the courts to take notice of and base their judgments upon it, except so far as they can find that its precepts and principles have been incorporated in and made a component part of the

positive law of the State.

To deny that the State has a right to appoint a legal holiday because it will clash with the religious views of some of the people is as wrong as to say, as is held in many cases, that the State has the power to discriminate in favor of the most numerous creed.

The national idea and the only reasoning to be applied, with the knowledge of the origin of Sunday, however different it may be, deemed through time and religious sentiment, is that the constitutional guarantee must be construed without reference to the religious convictions of the framers or to any creed. That Sunday as a holiday by law has no higher or further purpose than a day of rest.

That all religious ideas must be eliminated when passed upon in a judicial way. Any other construction would be inconsistent with the object and necessity for which the day is set apart, however hallowed may be the associations connected therewith.

